



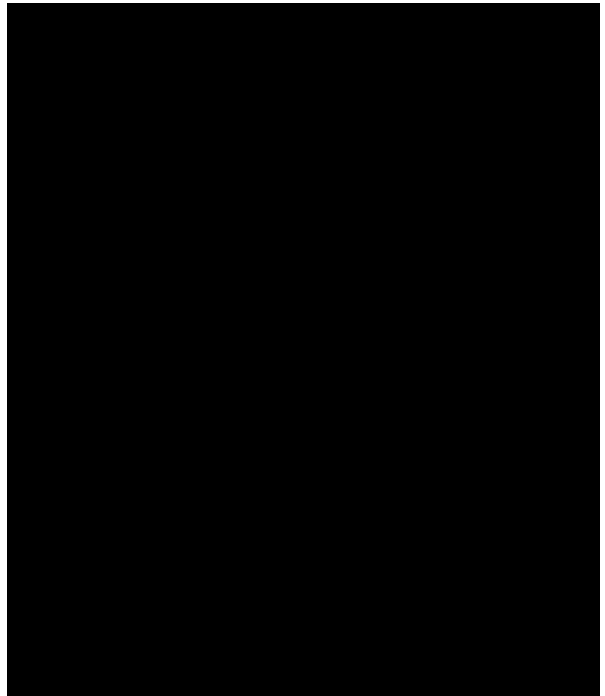
Global Negotiating and Deal Making

A Report By Xalles Limited

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Introduction

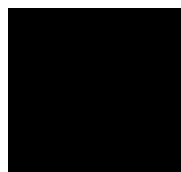
As more negotiations for many companies involve multiple parties, cultures, countries and legal jurisdictions, it's important for executives, key business development staff and the legal teams to become familiar with the practices of global negotiation and deal making techniques. To improve your skills in this area you need to understand other cultures, a wide variety of negotiating techniques, and test your patience. We have identified a number of concepts and techniques that you may use to improve the end result. It's important to note that your negotiating counterparts may also be aware of many of these techniques. All organizations are looking for ways to better compete in the global marketplace.



Preparation

"When you are thirsty, it's too late to dig a well." (Japanese Proverb)

Preparation is a key ingredient in any negotiation but in international negotiations it can be the difference between a good contract while building a solid long term relationship with the other party or a disastrous outcome. Reading this report and additional sources of information on international negotiations is one of the first steps. Read all the case studies available that are relevant to learn about the games that have been employed in real situations. Understand the cultures you will be dealing with. Understand the subtleties of the laws of the countries you will have to deal with. Understand how you will work with gatekeepers and middlemen to accomplish your goals. Create an agenda and a roadmap of how you would like the negotiation to go and determine the various positions that your counterpart would likely take. Look at all possible risks with the negotiation and develop migration strategies for the positions that the other parties might assume. Know the detours on your roadmap and how to use them if necessary.



Cultural Awareness

"Secrecy is the soul of business." (Spanish proverb)

Most world business cultures involve an element of "secrecy". Even the negotiators that appear to be open and giving all information freely are most likely holding back some information that could be affecting the motivation of the party or hidden agendas. Business deals, in some cases, with some people, can be completed on a handshake, but this has become the exception, not the rule in global business deals. Be very astute to the comments made that do not involve the paper document, as these are your clues to success. The breaks away from the negotiating table are when much can be accomplished and at the very least learned about the other party and their biases and preferences.

The other set of cultural elements to research before the negotiation is around symbolism. In different countries there are customs related to greetings. Be aware what the acceptable order is to greet a group of people. It could be by age, sex, or seniority in the company depending on the country. Also related to the greeting process is the physical contact. Depending on the country and the person you are meeting for the first time or a familiar face, you need to know the customs of bowing, shaking hands, kissing, or some combination of these elements. When kissing on the cheek it can be once, twice or three times on alternate cheeks. When shaking hands, there is a one-handed or two-handed shake. Understand the acceptable closeness comfort zone for the cultures involved. There may be certain numbers that are considered good or bad by local superstitions. In some countries you may also encounter colours and symbols that could positively or negatively influence a group of people. Only dedicated research will give you all that is required to effectively work within a new cultural situation.

The Agenda

"The marksman hitteth the target partly by pulling, partly by letting go. The boatsman reacheth the landing partly by pulling, partly by letting go." (Egyptian proverb)

Despite the fact that you might have a great methodology for getting the deal nailed down in the most efficient way possible, be prepared to jointly develop the approach with the other party. If they do not buy-in to the approach you may never get a deal or understand whether any progress is being made. You want to influence how the deal will be made without acting like a dictator.

Most deals follow a flow of pushing, pulling and just letting go. The secret to managing the agenda is knowing when to push, when to pull back, and when to simply let the other party drive the discussion. As you go through these iterations of pushing and pulling, always be cognizant of not backing the other party into a corner that prevents them from saving face. You are trying to complete a deal and not damage the long term relationship with the other party or you may lose the war even if you win the battle.

Gatekeepers

"It is amazing what you can accomplish if you do not care who gets the credit." (Former U.S. President Harry S. Truman)

Many large organizations utilize gatekeepers when entering negotiations with foreign parties. They have a multi-purpose job. They protect the key executives from getting into a situation where they might lose face. They also shield some of the negotiators from getting too close to the executives until the executive is ready to be more open. These gatekeepers also provide a wall around the ultimate negotiator and communicate their "fixed" position to your negotiator. The gatekeepers are not a positive element in a negotiation. The tactics to employ when they are present include having more patience than you would normally have to supply to the situation, holding some of your negotiating moves back until you get the opportunity to deal with the primary negotiator and finding ways to get to the real negotiator without appearing that you are trying to work around their designate.

The Middlemen

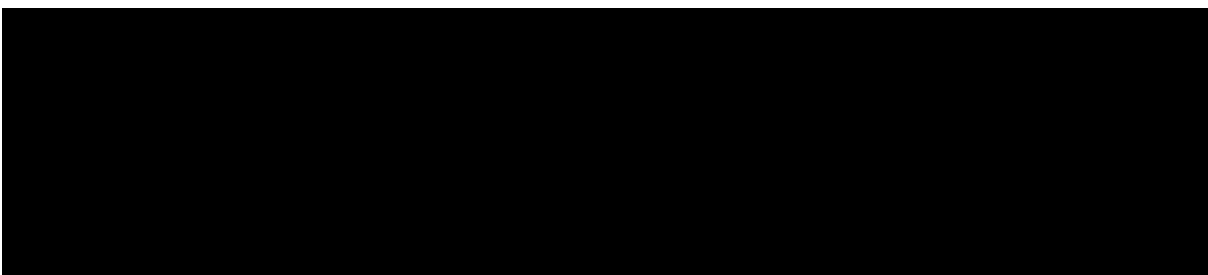
"Business is a combination of war and sport." (Andre Maurois)

Often there are intermediaries who will usually be staff of the principals who will carry the key messages back and forth outside of the formal meetings. Unlike the gatekeepers, these middlemen are a positive influence on the deal making process. Through the middlemen is where the real negotiating takes place. This process is common in many cultures and allows the principals to save face and can often save many deals from being aborted. This happens through diplomacy and the relationship that is created between the intermediaries for both parties. To compare the negotiating process to the sales process, there are a series of "closes" that need to take place for a complex deal to be completed. The intermediaries allow the opportunity for many "trial closes" to be executed, thus reducing the chance for an impasse.

Home Court Advantage

“The secret of business is to know something that nobody else knows.” (Aristotle Onassis)

The only situation where having the meeting at your location is not an advantage is if it prevents key individuals and decision makers from the other party from attending the negotiation. In all other cases try to have the meeting in your own offices and comfortable environment where you can control the agenda, the after hours events and the room dynamics. There are many other advantages to having the meeting in your own chosen setting. You have more resources and research abilities at your finger tips, there are fewer variables that can turn out in an unpredictable way and you do not have to deal with the problems and delays that can arise from international travel.



Traveling Away from Home

“You can close more business in two months by becoming interested in other people than you can in two years by trying to get people interested in you.” (Dale Carnegie)

There will be times that you will inevitably have to travel to the other party’s location for some of the negotiations. To limit the problems that can occur and turn the negative into a positive, use the travel time as preparation time. One advantage with traveling is having more focus on the negotiation and less distractions with other business issues. Travel early for the meeting and get prepared and immersed in the foreign environment. It’s critical that you look and feel as comfortable as possible in the other surroundings in order to show strength, compatibility and respect for the host party. Take time to recover from jet lag, so you are feeling alert and energized at the meetings. Tour the city for even a few hours if possible, and if that is not possible, read up on the location so that you can have a conversation about the location you are meeting in. Learn some of the local phrases for greetings and meal times, even if the negotiations will be conducted in your native language or through translators.



Games

"Take what you want and then pay." (Aztec proverb)

There are a number of games that are played that are typical in international business deals. Some of these games are relatively harmless and others are more serious and played by negotiators who are not interested in a win-win outcome for the deal. These more serious games can be a signal that you may not want to continue with the negotiation. This is an outline of some of the more common practices:

Smaller Games (Relatively Harmless)

- Testing questions to test arrogance or ignorance about the asking party's culture or company.
- Frequent delays in the start time for meetings or changes in meeting times, especially to times known to be inconvenient for the other party.
- Change in venues to test your patience.
- Making you sweat. Making you wait for an answer to an issue.
- Asking a lot of questions about your intentions without sharing equivalent information about their positions.
- Using lawyers to argue for terms of the deal that result in a test of wills and endurance.

Serious Games (Be Careful)

- The bait and switch. Testing the waters with a false offer and then switching the direction of the negotiations.
- Pushing hard for an unimportant condition in the deal which is meant to simply wear down the other party to accept almost any term to move forward.
- Utilizing a series of gatekeepers to negotiate parts of the deal and wear down the opposition and then bring in the prime negotiator to finish the deal when they are able to start from an advantageous position.
- Role Playing. Sometimes people will act outraged (even when they are not) at an offer or talk about terms as being ridiculous just to play a game in the hope that you will be more timid in suggesting additional changes or terms in your favour. The extreme in role playing is when the other party calls off the deal when they really have every intention of continuing with the negotiation.

Try to determine as early on as possible in the process whether the other party will play some of the more serious games with you. Many deals are not completed because of the tactics employed during the negotiation, even though there was an opportunity for both parties to benefit. If you assess the situation and the other party appears to not want to develop a win-win scenario, then in general it is best not to continue the process.



Patience

"With ordinary talents and extraordinary perseverance, all things are attainable." (Sir Thomas Fowell Buxton)

Western negotiators usually do not have patience for the negotiating pace of some cultures. If this lack of patience is shown it can mean that an aggressive negotiator takes advantage of this weakness and exploits it for gains in the deal. You need to have patience from a short term and long term perspective. During the negotiating meetings themselves, the party may use long periods of silence to collect their thoughts, which can be agonizing for most people who do not understand the customs. Resist your need to fill the silence with speech. It can backfire. Also in the longer term understand that complex deals could take months or years of building up the relationship before the real negotiating begins, whereas a similar deal in your own country could be finished in weeks. If the deal is worth it, your determination and perseverance will ultimately pay off in tangible results and consummated deals and the long process itself will actually help to strengthen the long term relationship of the parties involved.



Deal-makers versus Deal-breakers

"Make your bargain before beginning to plow." (Arabic Proverb)

Lawyers are often in the role of deal-breaker so be careful how all parties try to use their own legal teams. The business people should be trying to negotiate as many of the terms as possible before the lawyers have a chance to change contract wording from an initial draft. After this an iterative process needs to take place, versus simply handing the project to the lawyers to complete. In general the most productive process involves the individual business teams each discussing the contract and deal issues with their own legal teams first to lay out a basic framework of how the deal can work and for the legal people to help put some boundaries around certain terms to help the business people negotiate. At this point the business teams begin to negotiate with the other party until they have the majority of the intents agreed to. At this stage the legal teams have a go at the documents and detailed terms. The secret is to have a stable enough agreement and a common enough vision among the business teams so that the legal teams cannot tear the deal apart.

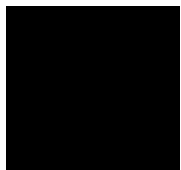
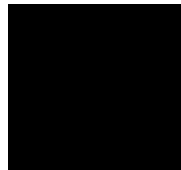


Legal Jurisdiction

In some countries the country law takes precedent over the contract law, so often you will have to do research on the country's law, not just be comfortable with the terms of the contract itself. You sometimes only need to travel a few miles to witness the difference. German law works one way, French, the opposite way when it comes to country versus contract law precedence. Also there can be jurisdictional differences when it comes to what you think is a binding or non-binding document. You might find yourself one day signing something that appears innocent that commits your company to direct responsibilities. Obtain proper legal advice even before signing Memos of Understanding and Letters of Intent.

Conclusion

Our firm has been dealing with negotiations and contracts in multiple languages across four continents for years. These deals can be complex from the many aspects you have just read about in this report. Do not let this intimidate you as each piece of knowledge and skill can be learned. As your firm engages more and more into this global economy, use these techniques available to you to make the international deals that will help grow your business.





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